

MOTOR CARRIER FUEL TAX ACT

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House Bill 5732 as introduced
Sponsor: Rep. Brandt Iden
Committee: Government Operations
Complete to 4-29-20

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5732 would amend the Motor Carrier Fuel Tax Act to suspend enforcement of certain motor carrier requirements under the act for motor carriers providing assistance related to the COVID-19 pandemic. The bill would largely codify into law the provisions of Executive Order 2020-40.

On March 10, 2020, Michigan's first patient tested positive for COVID-19, at which time Governor Whitmer declared a statewide state of emergency.¹ On March 23, the governor signed a "Stay Home, Stay Safe" executive order directing all state businesses and operations to temporarily suspend in-person operations not necessary to sustain or protect life.²

Executive Order 2020-40,³ issued April 8 and effective through May 5, suspends enforcement of certain motor carrier requirements administered by the Department of Treasury for motor carriers providing *critical assistance related to the COVID-19 pandemic*.

For purposes of the order, *critical assistance related to the COVID-19 pandemic* means transportation and other relief services that meet immediate needs for any of the following:

- Medical supplies and equipment related to the testing, diagnosis, or treatment of COVID-19.
- Supplies and equipment related to safety, sanitation, or prevention of COVID-19 transmission (such as masks, gloves, hand sanitizer, soap, and disinfectants).
- Food for emergency restocking of stores.
- Equipment, supplies, or personnel needed to establish or manage COVID-19-related temporary housing, quarantine, or isolation facilities.
- People designated by local, state, or federal authorities for medical, isolation, or quarantine purposes.

¹ Executive Order 2020-04, issued March 10, 2020 (<https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-04.pdf>), rescinded and replaced on April 1 with Executive Order 2020-33 (<https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-33.pdf>).

² Executive Order 2020-21, issued March 23, 2020 (<https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-21.pdf>), extended through April 30, 2020 on April 9, 2020 by Executive Order 2020-42 (<https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-42.pdf>).

³ Executive Order 2020-40: <https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-40.pdf>

- People necessary to provide other medical or emergency services.

Routine commercial deliveries or mixed loads that include both critical assistance as described above and other, noncritical supplies, equipment, or people are not considered critical assistance related to the COVID-19 pandemic under the order.

For motor carriers providing the critical assistance described above, the order suspends requirements concerning all of the following:

- Licensure of motor carriers under section 5 of the Motor Carrier Fuel Tax Act.
- Decals for qualified commercial vehicles under section 5 of that act.
- Trip permits for motor carriers under section 7 of that act.
- Any other requirements administered by the Department of Treasury concerning the credentialing of motor carriers under the International Fuel Tax Agreement (IFTA).

Suspension of the above requirements includes suspension of their enforcement and of any fines, penalties, or sanctions for their violation.

Finally, the order stipulates that it does not suspend, restrict, or waive any other state laws or regulations that apply to motor carriers, such as requirements related to reporting, paying, and keeping records for taxes under the Motor Carrier Fuel Tax Act or IFTA.

House Bill 5732 would incorporate the above provisions (except for the explicit suspension of licensure requirements) into the Motor Carrier Fuel Tax Act and provide that they are effective during a state of emergency declared under Executive Order 2020-33 or any extension of that order.

MCL 207.215 and 207.217 and proposed MCL 207.217a

BACKGROUND:

Michigan's motor fuel tax is established under the authority of the Motor Fuel Tax Act. This tax is not imposed directly on the end users of motor fuels (owners and operators of vehicles on public roads and highways), on motor fuel retailers (service stations), or on the distributors who deliver motor fuel to retailers. Instead the tax is assessed when motor fuel is transferred across a "rack" generally from a fuel supplier, a defined term in that act, to a distributor. It is suppliers who remit the tax Michigan Department of Treasury. In many cases suppliers are refinery or terminal owners.

When operators of motor vehicles purchase fuel in Michigan at retail, they indirectly pay motor fuel taxes as reflected in the pump price. However, motor carriers operating qualified commercial motor vehicles in interstate or cross-border commerce can use Michigan roads and highways without purchasing fuel in Michigan. To capture the use of public roads and highways by motor carriers, the Motor Carrier Fuel Tax Act establishes a "road tax" on motor carriers equal to the motor fuel tax rate established under the Motor Fuel Tax Act. The tax is calculated through conversion of miles driven on Michigan public roads or

highways to diesel motor fuel or alternative fuel consumed in Michigan in qualified commercial motor vehicles. In effect, the Motor Carrier Fuel Tax Act imposes on cross-border or interstate motor carriers the same motor fuel taxes established under the Motor Fuel Tax Act, by converting miles driven within Michigan into gallons of diesel consumed in Michigan. (Motor carriers who drive in Michigan and also purchase fuel in Michigan are given credit for taxes effectively paid “at the pump”—they aren’t penalized for purchasing fuel in Michigan.)

Other states and Canadian provinces have similar programs for taxing motor carriers based on miles driven within the respective state or province. These tax programs are coordinated through the International Fuel Tax Agreement (IFTA), an agreement of the 48 contiguous U.S. states and 10 Canadian provinces. IFTA provides for the reciprocal collection of state and provincial motor fuel taxes imposed on interstate and cross-border motor carriers.

Section 2a of the Motor Carrier Fuel Act authorizes the Department of Treasury to enter into a reciprocal agreements, including with other states and Canadian provinces, for the imposition of motor fuel taxes on an apportionment or allocation basis. Section 2a expressly directs the department to enter into IFTA and provides that if provisions of IFTA differ from the Motor Carrier Fuel Tax Act, the provisions of IFTA are controlling.

FISCAL IMPACT:

House Bill 5732 would amend the Motor Carrier Fuel Tax Act to suspend enforcement of some specific provisions of the act with respect to motor carriers providing critical assistance associated with the COVID-19 pandemic. The bill’s impact would appear to apply to a relatively small set of motor vehicles—motor carriers meeting the bill’s definition of “providing critical assistance associated with the COVID-19 pandemic,” who were engaged in interstate or cross-border transport, and who were not currently reporting miles driven and motor fuel tax owed under IFTA. As a result, we conclude that any potential loss in revenue from such vehicles not paying Michigan motor fuel taxes through IFTA would be relatively small.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.